

State of South Dakota

SEVENTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 1998

400B0327

SENATE BILL NO. 63

Introduced by: The Committee on Commerce at the request of the Department of Commerce
and Regulation

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding unprofessional
2 conduct by real estate licensees.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 36-21A-71 be amended to read as follows:

5 36-21A-71. Unprofessional conduct includes the following:

- 6 (1) Violating any provisions of this chapter or any rule promulgated by the commission;
- 7 (2) Making a material false statement in the licensee's application for a license or in any
8 information furnished to the commission;
- 9 (3) Making any substantial and willful misrepresentation with reference to a transaction
10 which is injurious to ~~the~~ any party for which he acts as agent;
- 11 (4) Making any false promise or advertisement of a character such as to influence,
12 persuade or induce a party to a transaction to ~~his~~ the party's injury or damage;
- 13 (5) Failure to account for or to remit, within a reasonable time, any moneys coming into
14 ~~his~~ the licensee's possession belonging to others, commingling funds of others with
15 ~~his~~ the licensee's own, failing to keep ~~such~~ the funds of others in an escrow or trust

1 account with a bank or other recognized depository in this state, or failing to keep
2 records relative to the deposit, which shall contain ~~such~~ any information as may be
3 prescribed by this chapter or the rules promulgated by the commission pursuant to
4 chapter 1-26 relative thereto;

5 (6) Being convicted, or pleading guilty or nolo contendere before a court of competent
6 jurisdiction in this or any other state, or before any federal court, of a misdemeanor
7 involving moral turpitude or a felony arising under the laws of this state or under the
8 laws of the United States or any other state that would be a misdemeanor involving
9 moral turpitude or a felony under the laws of this state;

10 (7) Claiming or taking any secret or undisclosed amount of compensation or the failure
11 of a licensee to reveal to ~~his~~ the licensee's principal or employer the full amount of
12 compensation in connection with any acts for which a license is required under this
13 chapter;

14 (8) Failing or refusing upon demand to produce any document, book, or record in ~~his~~ the
15 licensee's possession or under ~~his~~ the licensee's control, concerning a transaction
16 under investigation by the commission;

17 (9) Offering real property for sale or lease without the knowledge and consent of the
18 owner or ~~his~~ the owner's authorized agent or on any terms other than those authorized
19 by the owner or ~~his~~ the owner's authorized agent;

20 (10) Any violation of federal or state fair housing requirements;

21 (11) Failing or refusing upon demand to furnish copies including reproductions of any
22 document pertaining to any transaction dealing with real estate to a person whose
23 signature is affixed thereto;

24 (12) Paying compensation or commission in connection with a transaction to any person
25 who is not licensed under this chapter;

- 1 (13) Failing to disclose to an owner in writing ~~his~~ the licensee's intention or true position
2 if ~~he~~ the licensee directly or indirectly through a third party purchases for himself or
3 herself or acquires or intends to acquire any interest in or any option to purchase
4 property which has been listed with ~~his~~ the licensee's office for sale or lease;
- 5 (14) Failure by a broker to deliver to the seller in every real estate transaction, at the time
6 the transaction is consummated, a complete, detailed closing statement, showing all
7 of the receipts and disbursements for the seller; also failure to deliver to the buyer a
8 complete statement showing all money received in the transaction from the buyer and
9 how and for what the same was disbursed, and to retain true copies of the statements
10 in ~~his~~ the broker's files; also failure to date and sign the closing statement;
- 11 (15) Any other conduct which constitutes dishonesty or fraudulent conduct, whether
12 arising within or without the pursuit of ~~his~~ the licensee's license privilege;
- 13 (16) Accepting employment or compensation for appraising real estate contingent upon
14 reporting a predetermined value or issuing an appraisal report on real estate in which
15 the licensee has an undisclosed interest;
- 16 (17) The revocation or suspension of any other license held by a person licensed under this
17 chapter. Any other license includes being licensed as an attorney; real estate salesman,
18 broker or appraiser; insurance licensee; securities licensee; and other similar regulated
19 occupation, trade or profession;
- 20 (18) Using, proposing the use, agreeing to the use or knowingly permitting the use of two
21 or more contracts of sale, earnest money agreements or loan applications, one of
22 which is not made known to the prospective lender or the loan guarantor, to enable
23 the purchaser to obtain a larger loan than the true sales price would allow or to enable
24 the purchaser to qualify for a loan which ~~he~~ the purchaser otherwise could not obtain;
- 25 (19) Failing to promptly give a copy of an offer to purchase to the purchaser;

- 1 (20) Failing to promptly give the seller every written offer to purchase obtained;
- 2 (21) Upon obtaining an acceptance of the offer signed by the seller, failing to promptly
- 3 give a copy of it to both purchaser and seller;
- 4 (22) Failing to make certain that all of the terms and conditions of the transaction are
- 5 included in the offer to purchase;
- 6 (23) Giving a title opinion upon the merchantability of the title to property in any
- 7 transaction in which ~~he~~ the licensee participated;
- 8 (24) Preparing any legal document, giving any legal advice, or otherwise engaging in the
- 9 practice of law. Preparation of the following documents is exempt from this provision:
- 10 (a) Listing agreements or extensions;
- 11 (b) Offers to purchase;
- 12 (c) Offers to lease;
- 13 (d) Acceptances; and
- 14 (e) Closing statements;
- 15 (25) Permitting the use of a broker's license to enable licensed salesmen to establish and
- 16 carry on a real estate brokerage business if the broker has only insignificant control
- 17 of the affairs of the business conducted;
- 18 (26) Taking a net listing whereby a licensee agrees to take as compensation the proceeds
- 19 of a sale over and above the selling price agreed in the listing contract;
- 20 (27) Failing to put in writing all guarantees of sale and other guarantees made by a licensee
- 21 to the person listing the property for sale;
- 22 (28) Failing to put in writing any agreement to furnish or sell a warranty;
- 23 (29) Attempting to solicit or attempting to secure listings without first advising the owner
- 24 that ~~he~~ the licensee is a licensee and ~~that he~~ is engaged in real estate brokerage;
- 25 (30) Failing to protect and promote, ~~as he would his own,~~ the interests of the client whom

1 ~~he~~ the licensee has undertaken to represent to the best of the licensee's ability;

2 (31) Failing to deal fairly with all parties to a transaction;

3 (32) Committing any act constituting or demonstrating bad faith, incompetency or
4 fraudulent dealings;

5 (33) Using ~~his~~ the licensee's position to gain undue influence over a prospective buyer ~~or,~~
6 seller, landlord, or tenant, using ~~his~~ the licensee's position to coerce a buyer ~~or,~~ seller,
7 landlord, or tenant, or using duress on a buyer ~~or,~~ seller, landlord, or tenant;

8 (34) Issuing an insufficient funds check;

9 (35) In a business enterprise that requires licensing by the commission, associating in any
10 manner with another person who has had ~~his~~ a license suspended or revoked by action
11 of the commission while the suspension or revocation is in effect. This prohibition
12 includes a corporation, a partnership, an association, a single proprietorship, and an
13 employer-employee relationship. A licensee may act as an agent in a real estate
14 transaction for a person who has had ~~his~~ a license suspended or revoked by the
15 commission if the transaction is one that would occur in the ordinary course of the
16 licensee's business;

17 (36) Buying, selling, leasing, or exchanging real property under the auspices of a
18 partnership or corporation of which ~~he~~ the licensee owns an interest if it is indicated
19 that the purchase or sale is being made by a private party not licensed by the real
20 estate commission;

21 (37) Making a listing contract or any other contract with ~~his~~ the licensee's principal which
22 allows the licensee to purchase or lease the listed property and charge a commission
23 thereon without obtaining the written consent of the principal to such provision. This
24 written consent shall be in addition to the signing of any listing contract;

25 (38) Accepting a note or other nonnegotiable instrument or anything of value not readily

- 1 negotiable as earnest money on a contract or offer to purchase without the written
2 permission of ~~his~~ the licensee's principal; or
- 3 (39) ~~Making a substantial or willful misrepresentation to a buyer that is injurious to the~~
4 ~~buyer; or~~
- 5 —(40) Selling, buying, exchanging or leasing real property in a manner indicating that ~~he~~ the
6 licensee is not licensed under this chapter.